IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 286/2006
(Sona Ram @ Sohan Lal Sargara Vs. Mohini Devi)

Date of Order : 28/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Suresh Kumbhat for the petitioner.
Mr. Jitendra Ojha for the non-petitioner.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 09.1.2006 passed by Additional Sessions Judge, Sojat (for short 'the revisional court' hereinafter), in Criminal Revision No.13/2005 whereby the revision petition filed by the petitioner against the order dated 28.6.2005 passed by Judicial Magistrate, Sojat (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the revisional court as well as by the trial court.

Non-petitioner Mohini Devi filed an application under Section 125 Cr.P.C. against the petitioner seeking maintenance on the ground that she is the legally wedded wife of the petitioner and petitioner despite having sufficient means failed to maintain and neglected her. A reply to the application was filed by the petitioner. The petitioner came with a plea that the non-petitioner is not his legally wedded wife but she is legally wedded wife of one Mangilal and her marriage with Mangilal is still subsisting and therefore, she is not entitled for maintenance.

Before the trial court, the non-petitioner herself appeared as AW-1 and produced AW-2 Suadevi AW-3 Dinesh Bagri and AW-4 Narayan Lal. The petitioner himself appeared as defence witness, however, he did not produce any other evidence. The trial court, after discussing the evidence produced by the parties, by an elaborate and well reasoned order, came to the conclusion that it has been established by the evidence of non-petitioner that the non-petitioner is legally wedded wife of the petitioner and the petitioner failed to maintain and neglected her.

In her statement, the non-petitioner clearly stated that she was married to the petitioner five years ago according to Hindu rites and a reasonable dowry was given at the time of

marriage. AW-2 Suadevi, mother of the non-petitioner, also made the similar statement. AW-3 Dinesh Bagri, Photographer who snapped the photographs of the marriage ceremony, proved the photographs Ex.A-1 and A-2.

The non-petitioner and her mother categorically denied that the non-petitioner was earlier married to Mangilal. The statement recorded by the police under Section 161 Cr.P.C., Ex.D-1 and D-2 in an inquiry for an offence under Section 498 IPC, was put to her. In reply thereto, she categorically denied having made such a statement before the police. Though the petitioner himself appeared as witness and stated that non-petitioner was earlier married to one Mangilal who is driver by profession and marriage of non-petitioner with him is still subsisting, but his evidence does not find support from any other material or witness.

The revisional court, on proper consideration of the entire material and came to the conclusion that the conclusion arrived at by the trial court is based on proper and sound appreciation of the evidence produced by the parties.

Before me, heavy reliance has been placed by the learned counsel for the petitioner on the statement recorded by

the police under Section 161 Cr.P.C. in a different case and contended that before police, the non-petitioner made statement that she was married to Mangilal. Be that as it may, the statement under Section 161 Cr.P.C. is not a substantive piece of evidence; more particularly, it can only be used for confronting the maker of the statement under Section 145 of the Evidence Act which has been used by the petitioner and on being confronted with that statement, the non-petitioner categorically denied having made such a statement and therefore, in my view, the petitioner failed to establish that the non-petitioner was earlier married to Mangilal and married with him is still subsisting. In the circumstances, therefore, no fault can be found with the concurrent findings arrived at by the courts below. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any Court.

The petition has no force and is therefore, dismissed.

(H.R.PANWAR),J.

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